THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :13.03.2007

WP(C) No.3213/2001

SADHU SARAN SHAHI ...Petitioner

- versus -

THE UNDER SECRETARY & ORS ...Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Ranjan Dwivedi with Mr R.S.Sharma and Mr Mathili Sharan
For the Respondent : Ms Monica Garg

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. This is yet another case of a petitioner seeking the Freedom Fighter's pension under the Swantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as 'the said Scheme') and the Central Government denying the same on technical grounds.

2. The Supreme Court in the case of ***Gurdial Singh v. Union of India***

& Ors *: (2001) 8 SCC 8* had clearly and categorically observed that the standard of proof required in such cases is not such as is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. The Supreme Court was of the view that the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country. It was further observed that a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. This Court had also followed the same principle in directing award of pension to Mahender Singh in CW 7439/2001 decided on 24.11.2003 [108 (2003) DLT 641].

3. The petitioner's case was recommended by the State Government. The petitioner is said to be covered under the Scheme for having remained underground in connection with the freedom struggle. The period for which the petitioner remained underground is given in his application as 15.08.1942 to August, 1943. Two conditions are normally insisted upon before pension is granted under this head. The first is that there must be court records to show that the petitioner was wanted in connection with certain cases and that he was absconding. The second is that in case such record is not forthcoming and a non-availability certificate is issued by the concerned authorities in the State, a certificate of a Freedom Fighter, who has himself been in prison for over five years, needs to be submitted by the claimant. In the present case, the State

Government has recommended the case of the petitioner. There is also record of the case of 1948 of Muzaffarpur, which indicates that there was a case against the present petitioner and it is only in 1948 that the arrest warrant was recalled and the case was discharged under Section 494 of the Code of Criminal Procedure, 1898. It is clear from this that immediately after Independence, the case against the petitioner was withdrawn. It becomes clear that the withdrawal of the case was because of the fact that petitioner was involved in the freedom struggle and not in an ordinary criminal case because, in that event, there would be no question of withdrawal of the case.

4. In any event, a certificate has also been issued by one Mr Basawan Singh on 22.05.84, who himself was a Freedom Fighter and had spent 15 years in jail during the freedom struggle. The Central Government ought to have given due credence to a certificate issued by such a Freedom Fighter, who had spent 15 years of his life for the Freedom of this country. It is, therefore, directed that the order of rejection of the petitioner's claim for pension stands set aside and the petitioner is entitled to receive pension under the Scheme w.e.f. 02.06.1981, the date on which he made the application.

This writ petition stands disposed of.

BADAR DURREZ AHMED

(JUDGE)

March 13, 2007
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